



Agenda Date: 11/08/01

Agenda Item: 4A

STATE OF NEW JERSEY

Board of Public Utilities

*Two Gateway Center
Newark, NJ 07102*

TELECOMMUNICATIONS

IN THE MATTER OF THE PETITION FOR AN)
ORDER AUTHORIZING AFN TELECOM, LLC)
TO PROVIDE LOCAL EXCHANGE AND)
INTEREXCHANGE TELECOMMUNICATIONS)
SERVICES THROUGHOUT NEW JERSEY)

ORDER OF APPROVAL

DOCKET NO. TE00100794

(SERVICE LIST ATTACHED)

BY THE BOARD:

By letter dated October 20, 2000, AFN Telecom, LLC (Petitioner or AFN) filed a petition with the Board of Public Utilities (Board) requesting authority to provide local exchange and interexchange services throughout the State of New Jersey. In addition, AFN responded to a Staff questionnaire by letter dated March 23, 2001 and to Staff interrogatories by letter dated July 25, 2001. Petitioner requested confidential treatment of the financial information in Exhibit B of its petition and the financial information in its July 25, 2001 letter.

According to the petition, Petitioner was incorporated under the laws of the State of Virginia on June 16, 2000. Petitioner's principal offices are located at 2 West Second Street, Williams Tower II, 9th Floor, Tulsa, Oklahoma 74103-3102. Petition at 2.

Petitioner submitted copies of its Articles of Incorporation, New Jersey Certificate of Good Standing and its New Jersey Certificate of Authority to Operate as a Foreign Corporation. Petition at 3, Exhibit A. According to the petition, AFN was formed to provide local exchange and interexchange services. Petition at 1. Petitioner advised that it is currently authorized to provide facilities-based and resold local exchange and interexchange services in Indiana, Illinois, Kentucky, Maryland, New York, Ohio, Virginia and West Virginia. AFN advised that it has not been denied authority to provide telecommunications services in any state. In addition, AFN indicated that it has no pending civil, criminal or administrative actions against it. AFN advised that it is not currently negotiating an interconnection agreement.

In its petition, Petitioner advised that it seeks authority to offer local exchange and interexchange telecommunications services to telecommunications carriers and large business customers throughout New Jersey. AFN will lease facilities from its affiliate, AFN Communications. Its services will include, but not be limited to, non-switched

access, private line and interLATA toll. AFN also plans to offer fiber capacity on a wholesale basis to other carriers. Petition at 6, July 25, 2001 letter.

Petitioner requested a waiver of N.J.A.C. 14:1-4.3 and 14:1-5.15, which require that its books and records be maintained in accordance with the Uniform System of Accounts (USOA) and within the State of New Jersey. Petitioner requested, in the interest of efficiency and to prevent undue burden, permission to maintain its books and records in accordance with Generally Accepted Accounting Principles (GAAP). Petition at 9. Petitioner also requested permission to keep all books, records, documents and other writings incident to the conduct of Petitioner's business in the State of New Jersey at Petitioner's corporate offices in Tulsa, Oklahoma. Petition at 8. Petitioner also stated that, upon written notice from the Board, it will produce its books and records at such time and place within New Jersey as the Board may designate and will pay any reasonable expenses for examination of the records. Petition at 9.

Petitioner asserted that approval of its petition will further the public interest by expanding the availability of competitive telecommunications services in the State of New Jersey. Petition at 7. Petitioner also asserted that approval of this petition will provide New Jersey customers with access to new technologies and service choices and will permit customers to achieve increased efficiencies and cost savings. In addition, Petitioner stated that approval of its petition will enhance the telecommunications infrastructure in the State of New Jersey and will facilitate economic development. Petition at 8.

With regard to its technical and managerial qualifications, AFN stated that it possesses the technical capability and managerial qualifications to operate and manage its telecommunications operations in the State of New Jersey. Petition at 5. Petitioner submitted the professional biographies of its key personnel who, according to AFN, are well qualified to execute its business plans, and have extensive managerial and technical experience in the telecommunications industry. Petition at 5, Exhibit C.

Petitioner has submitted, as evidence of its financial qualifications, pro forma financials for all of the jurisdictions currently served by AFN, and will need to file pro forma financials for its New Jersey operations only, prior to approval of its tariff.

The Division of the Ratepayer Advocate, by letter dated April 23, 2001, recommended approval of this petition.

DISCUSSION

On February 8, 1996, the federal Telecommunications Act of 1996, P.L. 104-104, 110 Stat. 56, codified in scattered sections of 47 U.S.C. §151 et seq., was signed into law, removing barriers to competition by providing that:

[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

[47 U.S.C. §253(a)].

Therefore, Board approval of Petitioner's entry into the telecommunications marketplace is required, assuming Petitioner meets all other requirements, including, but not limited to, a demonstration of financial, technical and managerial integrity.

In considering this petition, the Board recognizes its obligation not to prohibit entry into intrastate telecommunications markets. 47 U.S.C. §253(a). Approval is also in keeping with the New Jersey State Legislature's decision that it is the policy of the State to provide diversity in the supply of telecommunications services, and its findings that competition will "promote efficiency, reduce regulatory delay and foster productivity and innovation" and "produce a wider selection of services at competitive market-based prices." N.J.S.A. 48:2-21.16(a)(4); N.J.S.A. 48:2-21.16(b)(1) and (3).

Therefore, having reviewed AFN's petition and the information supplied in support thereof, the Board FINDS that Petitioner has demonstrated that it possesses the requisite financial, technical and managerial resources, which are necessary to provide telecommunications services in New Jersey. Accordingly, the Board HEREBY AUTHORIZES Petitioner to provide local exchange and interexchange telecommunications services in New Jersey subject to approval of its tariff and the submission of pro forma financial statements for its New Jersey operations. The Board notes that Petitioner will not be able to provide telecommunications services until a tariff is approved by the Board and the required financial statements have been provided.

Regarding the Petitioner's request for waivers of Board rules, the Board FINDS that the Petitioner has demonstrated good cause why the Board should grant relief from its requirements that Petitioner maintain its books and records under the USOA and within New Jersey. Therefore, subject to the Petitioner's continuing responsibility to provide the Board its books and records upon 48 hours notice, and in the manner requested, and to pay to the Board any reasonable expenses or charges incurred by the Board for any investigation or examination of these books and records, the Board APPROVES Petitioner's request for the exemptions from maintaining its books and records in New Jersey and under the USOA.

Regarding the Petitioner's request for confidential treatment of the financial information submitted as Exhibit B of the petition and the financial information in its July 25, 2001 letter, the Board FINDS that the Petitioner has shown good cause, pursuant to N.J.A.C. 1:1-14.1, that this information merits protection from disclosure in order to prevent competitive harm to the Petitioner. Therefore, the Board DIRECTS that this financial information be kept under seal.

DATED: 11/8/01

BOARD OF PUBLIC UTILITIES
BY:

(signed)
CONNIE O. HUGHES
PRESIDENT

(signed)
FREDERICK F. BUTLER
COMMISSIONER

(signed)
CAROL J. MURPHY
COMMISSIONER

ATTEST:

(signed)
FRANCES L. SMITH
BOARD SECRETARY